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# Case Law Update

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# Travel Law Update

Sarah Prager KC

# ***Eversfield Preparatory School Trust Limited v Diverse World Limited [2025] EWCC 33***

The facts:

- In May 2019 the school arranged with the defendant tour operator for the latter to provide a school trip to Barcelona for a group of 38 children aged ten or eleven, and four members of staff. The trip was to take place between 11<sup>th</sup> and 15<sup>th</sup> May 2020 and included excursions to a water park, FC Barcelona's Nou Camp stadium, the Catalan National Art Museum, the traditional Catalan theme village Poble Espanyol, the Castell de Montjuic on the hill overlooking the city, a Flamenco experience, Gaudi's Parc Guell and markets, parks and the old port of Barcelona.

# ***Eversfield Preparatory School Trust Limited v Diverse World Limited [2025] EWCC 33***

The facts:

- The tour operator's standard contract applied and provided for a cancellation fee on a sliding scale before the trip: ten weeks or more before, only the deposit and payments due, 22 days to 10 weeks 75% of the total price and up to 21 days, 100% of the price. The school agreed a price for the trip of £20,235 in total, to be paid in three instalments: the deposit of £3000 in May 2019, £4,047 in November 2019 and £13,188 on 25<sup>th</sup> February 2020.

# ***Eversfield Preparatory School Trust Limited v Diverse World Limited [2025] EWCC 33***

The facts:

- By the time the last payment was due, however, there was increasing concern in the UK and in Spain regarding the oncoming Covid-19 pandemic; and on 12<sup>th</sup> March the Department of Education issued guidance to schools to the effect that they should not undertake foreign trips until further notice.

# ***Eversfield Preparatory School Trust Limited v Diverse World Limited [2025] EWCC 33***

The facts:

- On 17<sup>th</sup> March 2020 the Foreign and Commonwealth Office advised against all but essential travel abroad; on 20<sup>th</sup> March, the DoE announced the closure of all UK schools, and on 23<sup>rd</sup> March, the UK entered the first Covid-19 lockdown.
- On 1<sup>st</sup> April the school cancelled the trip. There was no detailed evidence before the court as to why it took this decision.
- At this time both Spain and the UK were in lockdown, but it was not at that point certain that the lockdowns would continue until 11<sup>th</sup> May, when the trip was due to commence.

# ***Eversfield Preparatory School Trust Limited v Diverse World Limited [2025] EWCC 33***

The facts:

- Under the standard cancellation terms of the contract, as the cancellation was more than 21 days before the trip, 75% of the price was payable, namely £15,176.25, which the tour operator retained, refunding the school £5,058.75 on 11<sup>th</sup> June 2020. The school sued for the balance of £15,176.25.

# ***Eversfield Preparatory School Trust Limited v Diverse World Limited [2025] EWCC 33***

The result at first instance:

- The Deputy District Judge at first instance seems to have held that Regulation 12(7) of the Package Travel Regulations was to be interpreted as incorporating a causation test: in order to succeed in its claim for a refund the school was required to show that the unavoidable and extraordinary circumstances had caused the cancellation, and that this was the reason for it.

# ***Eversfield Preparatory School Trust Limited v Diverse World Limited [2025] EWCC 33***

The appeal:

- The school appealed. There were previous County Court authorities to the effect that such a causation test was the correct one (cf for example *John Masefield v Voyager School Travel* (2025)) and others stating the opposite (cf *Our Lady & St John's Catholic College v Acorn Travel Group* [2025] EWCC 6). There were also decisions of the Court of Justice of the European Union in support of the school's legal submissions (cf *QM v Kiwi Tours* [2024] Bus LR 1045, *MD v Tez Tour* [2024] Bus LR 1024 and *GF Schauinsland-Reisen* [2025] Bus LR 508), but none of these authorities was binding on the judge, either at first instance or on appeal.

# ***Eversfield Preparatory School Trust Limited v Diverse World Limited [2025] EWCC 33***

The result on appeal:

- His Honour Judge Tindal allowed the appeal:
  - The Regulations mandate a high degree of consumer protection;
  - A global health crisis is capable of triggering a right to refund, whether or not it is possible to travel to a destination;
  - Whether there are unavoidable and extraordinary circumstances at the place of destination is judged as at date of cancellation and not with hindsight.

# ***Eversfield Preparatory School Trust Limited v Diverse World Limited [2025] EWCC 33***

The result on appeal:

- His Honour Judge Tindal allowed the appeal:
  - There is no ‘causation test’, only a ‘precondition test’ – if there are unavoidable and extraordinary circumstances at the place of destination significantly affecting performance, a refund is triggered.
  - The consumer need not give a reason for his or her cancellation – the test is objective, not subjective.

## ***BF v Z (C-469/24)***

Travellers booked a package holiday at a hotel in Albania.

Demolition and construction works commissioned by Albanian authorities severely disrupted key hotel amenities and catering services.

The travellers sought compensation and a full refund from the package travel organisation.

Travel organiser argued that disruptions were due to unavoidable and extraordinary circumstances beyond its control which released it from its obligation to compensate the applicants.

## ***BF v Z (C-469/24)***

**Unavoidable and extreme circumstances** is akin to the concept of ‘force majeure’.

Public authority demolition work is usually accompanied by publicity; unlikely to be ‘unavoidable and extraordinary’

## ***Alton v PZU [2024] EWCA Civ 1435***

- The Claimant was in an RTA with a lorry driver. The driver was insured by a Polish insurer.
- The insurer's claims-handler (InterEurope) admitted liability.
- At this point things started to go wrong.

## ***Alton v PZU [2024] EWCA Civ 1435***

- The claim was issued against InterEurope.
- The claim asserted a direct cause of action based on the Third Parties (Rights Against Insurers Act) 2010.
- The claim asserted a direct right of action via the European Communities (Rights Against Insurers) Regulations 2002.

# ***Alton v PZU [2024] EWCA Civ 1435***

## The Claimant's Argument

- Article 18 of Rome II gives claimants a direct right of action against an insurer if applicable law allows it.
- Article 18 of the Motor Insurance Directive requires a member state to permit a direct right of action.
- The overwhelming likelihood is that Polish law permits direct actions against liability insurers.

# ***Alton v PZU [2024] EWCA Civ 1435***

## DDJ Judgment

The grounds for the relevant amendment had not been made out. There was no sufficient pleading to make out the requirement.

## CJ Judgment: allowed the appeal

Failure to consider proportionality. PZU had never denied that there was a cause of action against them.

# ***Alton v PZU [2024] EWCA Civ 1435***

## CoA Judgment: dismissed the appeal

The pleading could be properly formulated to advance a claim. PZU would have been aware that there was a direct cause of action (Article 822(4) of the Polish Civil Code).

Limitation was not engaged: the overall factual matrix was still the same.

# ***Cannestra v McLaren Automotive Events Limited [2025] EWHC 1844***

The facts:

- McLaren-hosted an ice-driving experience in Lapland.
- C was driving a snowmobile on a beginner-friendly circular track. C lost control and collided with a tree.
- McLaren's subcontractors and suppliers were alleged to have failed to provide adequate instruction and guidance.

# ***Cannestra v McLaren Automotive Events Limited [2025] EWHC 1844***

The issues:

- Did the Defendant breach the standard of care when briefing the Claimant on how to operate the snowmobile?
- Did the Defendant breach the standard of care when switching the snowmobile to Standard mode after 1-2 minutes of riding?
- Did the Defendant breach the standard of care by failing to guide him round the track safely?

# ***Cannestra v McLaren Automotive Events Limited [2025] EWHC 1844***

The result:

- The claim was dismissed. Not only had the claimant accepted that he was responsible for the accident immediately after it occurred, his credibility was called into question.

## ***Cannestra v McLaren Automotive Events Limited [2025] EWHC 1844***

The claimant's expert on snowmobiles:

“he tended to mix up what he considered to be best practice with the actual local standard, which was what reasonable guides would do to keep the Claimant safe, in so far as they reasonably could, when briefing and guiding customers. He passed overly strict opinions on a number of issues and he had to withdraw some of his criticisms in cross examination. I do not accept his opinion that the Lynx Xtrim 900 should not ever be used by inexperienced riders in Standard mode. I consider that the joint Finnish Law expert's opinion in their agreed report is the correct approach.”

# ***DHV v Motor Insurers' Bureau [2025] EWHC 2002 (KB)***

The facts:

- On 21<sup>st</sup> July 2017 DHV was struck by a car as he crossed the road in Mallorca, sustaining a serious brain injury as a result. The driver was uninsured, and so the claim was brought against the Motor Insurers' Bureau pursuant to Regulation 13 of the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003.
- The Defendant admitted liability but alleged contributory negligence.

## ***DHV v Motor Insurers' Bureau [2025] EWHC 2002 (KB)***

The claimant's accident reconstruction expert:

“Her original report contained errors. She fundamentally changed her position about the speed of the vehicle. She was prepared to offer opinions on topics she had no sufficient qualifications to give. She did not answer questions directly and often digressed unhelpfully. Her evidence, for example on the impossibility of the injuries to DHV being consistent with his lying on the ground and being “dragged”, was unconvincing and in defiance not only of expert medical opinion but simple precepts of logic and common sense. It took her far too long to make reasonable concessions which she only made when forced to.”

## ***DHV v Motor Insurers' Bureau [2025] EWHC 2002 (KB)***

The defendant's accident reconstruction expert:

“He gave evidence about facts that might be seen as critical of the driver in this case and at times evidence that may be construed as helpful to the claimant and unhelpful to the defendant party that had instructed him...I found him to be careful and measured in his evidence, always at pains to alert the court to the limits of his evidence and expertise. There was no overreach, as I encountered with some of the experts...He made concessions when he needed to, not because he was forced to do so but because he plainly saw this as right given the limits of the evidence or his expertise. He was not stubbornly dogmatic in his views.”

## ***DHV v Motor Insurers' Bureau [2025] EWHC 2002 (KB)***

The claimant's Spanish law expert:

“I found her to be in certain vital respects an unsatisfactory witness. This unsatisfactoriness ranged from simple factual matters such as the number of times she had testified in English proceedings (it was two cases, neither of which were in the High Court but in the court below) to her persistent attempt to deny she had copied parts of a colleague's expert report. It seems that the root of her difficulty is that she approached the case at times more as an advocate for the party instructing her rather than an independent arms-length expert.”

## ***DHV v Motor Insurers' Bureau [2025] EWHC 2002 (KB)***

The defendant's Spanish law expert:

“I detected no sense of partiality, and was satisfied that at all times he was attempting to assist the court rather than argue one side of the case on behalf of those who instruct him...I found his evidence straightforward, directly engaging with the question, aware of his limitations and balanced. I found no reason to doubt his balance or credibility.”



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# Personal Injury Update

Laura Hibberd

# Procedure

## 1. Rodger v Iceland Foods Ltd [2025] 1 WLUK 716

- Unusually, D sought its own medical evidence in a FT case. Court determined evidence reasonably necessary (r.35.1). D had asked Part 35 questions and sought expert evidence around 6 weeks later.
- Adjournment of FT trials exceptional, it was considered reasonable for D to have waited until it had obtained its own expert evidence to confirm it had proper grounds for challenging expert analysis on C's case.

## 2. Forsyth v Howson [2025] EWHC 653 (KB)

- D applied to approve a settlement for C under IHJ. C sustained serious injuries in RTA including TBI. C accepted an offer against advice from counsel.
- Experts agreed C retained litigation capacity; not agreed re financial capacity. C sols intended to obtain further evidence and apply to CoP if appropriate.
- D concerned applying to CoP may unravel settlement unless already approved under IHJ. Alternative argument that accepting Part 36 was a financial decision and C may not have capacity to accept.
- C did not support the request for approval.
- Evidence clear C retained litigation capacity, but for the concerns around financial capacity there would be no need for approval hearing. Court did not have CPR Pt 21 material before it. D counsel "inventive but misconceived" trying to rely on confidential note prepared on neutral basis on merits of settlement.
- Court usually has advice from counsel commending settlement. Unusual to have advice saying offer too low but still seeking it to be approved.
- Risk of settlement being unpicked was very small. C had accepted Part 36 and had capacity to do so. Application dismissed.

## Procedure Pt II

### 3. **Holland v Zurich Insurance Co (UK) Ltd [2025] 4 WLUK 707**

- Claim started in RTA portal, early admission of liability. PI claim settled £520. issues remained of credit hire, pre-accident value, recovery.
- Case allocated to MT. Claim limited to £91k. Dispute about complexity band. Claim pre-1<sup>st</sup> Oct 2023 and C argued included PI so should not be IT. D appealed allocation.
- Claim did not include PI (on PoC/prayer), allocation to IT was open to court and should have so allocated.

### 4. **Bali v 1-2 Couriers Limited & Walsingham Motor Insurance Limited [2025] EWCA Civ 1413**

- RTA on 2/12/2019. C instructed sols on 22/11/2022. Court received claim form on 2/12/2022. Court sought further info 16/12/2022, solicitors replied 15/3/2023. Delays in paying court fee, only paid on 12/12/2023.
- CF sealed 13/12/2023, not sent to sols until 2/4/2024 and received 15/4/2024 (after 4-month deadline for service). Sols did not apply for extension of time for service before deadline, sought relief after receiving claim form. D only learnt of proceedings when served with application for relief.
- Relevant rules – CPR r.7.2(1) and r.7.2(2). CF deemed issued 13/12/2023 when sealed, not when sent out.
- Court refused to extend time for service, sols not taken all reasonable steps to effect service (r.7.5 and r.7.6 considered) in time.

## Procedure Pt III

### 5. Perrin v Walsh (Rev1) [2025] EWHC 2536

- RTA 11/2/2020, C knocked from motorcycle and sustained multiple traumatic injuries.
- Liability not in issue. D contends extent of injuries exaggerated by C.
- Injuries included head injury (query Mild TBI), knee/leg injuries, PTSD, somatic symptom disorder, chronic widespread pain, FND. C had 13 surgeries to date.
- 2 issues for the court:
  1. D's application for surveillance footage
  2. C's application for specific disclosure of draft report prepared by neuropsychologist instructed by D (Dr Mullin)
- Other application for D to amend defence and plead FD.

## 1. Surveillance

- Between 16/6/2022 – 28/6/2024 D instructed TSG to carry out covert surveillance of C. Used a number of operatives over several dates.
- C objected to evidence being admitted. Argued TSG/employees dishonestly manipulated evidence to paint C in negative light by:
  - a) Editing footage deliberately unfavourably to C
  - b) Failing to obtain footage appropriately (gaps in filming)
  - c) Completely removing reference to one of operatives from logs and not providing unedited footage
  - d) Failed to retain SD cards

## Relevant Law:

- Douglas v O'Neill [2011] EWHC 601:

“Surveillance evidence has long been a **legitimate weapon, when properly obtained and legitimately used**, for a defendant to put before a court that may demonstrate that a claimant's evidence is false. Such evidence may show inconsistencies that are inexplicable by a claimant. Its production may lead to the end in one way or another to a claim or a part of a claim. It may be a powerful tool in preventing the successful advancement of a case which is based on untruth”.

- **CPR 32.1** – Court has power to exclude evidence/prevent D relying on evidence

- Rall v Hume [2001] EWCA Civ 146:

“the starting point on any application of this kind must be that, where video evidence is available which, according to the defendant, undermines the case of the claimant to an extent that would substantially reduce the award of damages to which she is entitled, it will **usually be in the overall interests of justice to require that the defendant should be permitted to cross-examine the plaintiff and her medical advisors upon it, so long as this does not amount to trial by ambush.**”

*Douglas [para 46-47]*

“issue of ambush comes to this – are the circumstances in which the evidence is disclosed such that the Claimant has a fair opportunity to deal with it, or was the time or circumstances of disclosure such that the court should use its case management powers to prevent the Defendant from relying upon it.

The latter type of order would be one that used the penalty of preventing the use of relevant evidence against a defendant for failing to act in a manner consistent with effective and fair case management.”

- *Jones v University of Warwick [2003] EWCA Civ 151:*

“The court must try to give effect to what are here the two conflicting public interests. The weight to be attached to each will vary according to the circumstances. The significance of the evidence will differ as will the gravity of the breach of Article 8, according to the facts of the particular case. The decision will depend on all the circumstances”

- *Cullen v Henniker-Major [2024] EWHC 2908 (KB)*

“I accept that if something is shown on the footage, that is determinative of it happening. However, I do not accept that the absence of something on the footage is determinative of it not happening”

## Decision

- Evidence does have probative value as to C's level of functioning and (dis)ability.
- Evidence calls for explanation from C (statements permitted)
- No issue of ambush.
- Real issues with D's statements from TSG employees. Parts were "unequivocally untrue". And management statements "dismissive" of the failings and fact false statements before the court.
- Not accept C's assertion the footage was edited/not provided due to a malign motive or deliberate and dishonest attempt to mislead about C's disabilities.
- Process of editing flawed
- Commentary should be removed unless agreed between parties.
- Evidence not gone to experts, so could be edited again to provide agreed compilation. Current editing unacceptable.
- Lack of SD not a bar to D relying on the footage (Noble v Owens).
- "every single second" to be provided to C
- Trial judge could consider costs measures to reflect concerns, e.g. not allow recovery of costs of surveillance.

## 2. C's application for Dr Mullin's draft report

- C contended Dr Mullin materially changed position on central issue to case: effort applied by C to neuropsychological tests.
- D served 2 reports from Dr Mullin, Dec 2024 and 4 Feb 2025.
- D relied upon neurologist Dr Jarman, Jan 2025. Dr Jarman referred to draft report (August 2024) in instructions.
- 2 passages of text quoted by D (in “first amended defence” and Dr Jarman's report) which were not in Dr Mullin's served reports.
- D seeking to amend defence to plead FD. 2 versions before court.
- D put “little before the court about this issue in writing”, no statements from sols nor addressed in detail by counsel in skeleton/orally.

- Expert position had changed. Served report dated December 2024 now stated that the Claimant passed the tests of Performance Validity administered and that there was no indication of intentional underperformance upon testing. Dr Mullin's position appeared to change from there being two trials failed to one trial that was failed.

## Relevant Law/Procedure

- *Lucas v Barking, Havering and Redbridge Hospital NHS Trust* [2004] 1 WLR 220: CPR r.35.10(4) was said to strike an important balance between on the one hand the protection of the party whose privilege is lost, and on the other the vindication of 35.10(3) where there is a real question-mark as to its fulfilment.
- *Jackson v Marley Davenport Ltd* [2004] EWCA Civ 1225; [2004] 1 WLR 2926: the Court of Appeal unanimously upheld the position that a draft expert report is privileged, subject to the provisions of CPR 35.10.
- *Pickett v Balkind* [2022] EWHC 2226 (TCC); [2022] 4 WLR 88: issue was whether inspection should be permitted of a draft report not served in proceedings that an expert had subsequently relied upon as part of their opinion within the expert joint statement.
- CPR r31.14(1) and 35.10 (plus PD35) considered

## Decision

- Starting point is draft expert report privileged
- Merely mentioning draft expert report not usually mean privilege waived
- Where report of 'Expert A' is provided to 'Expert B' for the purposes of providing evidence upon which 'Expert B' may base their opinion, a party to the proceedings may apply to the Court for an order for inspection of that document in the same way as any other document.
- Expert A's report was provided to Expert B as part of the instructions to Expert B, it would not usually be privileged but would only usually be ordered to be produced if the court were satisfied of reasonable grounds to consider the statement of instructions set out by Expert B was inaccurate or incomplete.
- If report not part of instructions, then outside CPR 35.10(4) and likely to be privileged, so production only possible if privileged waived.
- Court needs to consider whether Expert A report merely mentioned, or if content relied upon.

- D not seeking to rely on first amended defence with offending paragraph.
- Dr Jarman referred to draft report, so court can order production and inspection.
- Court troubled by lack of info provided by D on the issue.
- “highly likely that Dr Jarman was provided with the draft (August 2024) version of Dr Mullin's report and that the draft report was provided as part of the instructions to Dr Jarman to prepare his report”
- Court satisfied CPR 35.10(3) complied with, report had been listed by Dr Jarman.
- No grounds to conclude the statement of instructions inaccurate or incomplete per 35.10(4).
- Dr Jarman not appear to rely on Dr Mullin's findings to underpin conclusion, distinguish from *Pickett*.
- Application refused.



## 6. **Doroudvash v Zurich Insurance Plc [2025] EWCC 10 (Adam Dawson for C)**

- 2 Police Constables (S and D) responding to 999 call on 6/8/2017. PC S driving, PC D front passenger. Driving 87mph on 30mph road. Mr T emerging from side road, collision occurred.
- PC D and Mr T injured, not known about PC S.
- PC S convicted causing serious injury by dangerous driving.
- Mr T commenced proceedings against PC S and Commissioner for Metropolis, liability admitted, no con neg, case settled.
- PC D sent CNF to Mr T's insurers under 2002 EC Regs on 1/5/2018. Liability admitted in full by Zurich on 23/5/2018



- Part 8 proceedings issues 10/6/2018, damages in excess of £200,000. Transferred to Part 7. D (Zurich) tried to resile from admission in defence.
- Applied to resile from admission 22/9/2023. Heard on 18/6/2024 and permission given.
- Issue of adding Commissioner as D2 and/or Zurich adding Commissioner for contributions.
- Court criticised Commissioner for only making position known a matter of days before hearing. Making technical arguments that there was no contribution claim, as under 2002 EC Regs this is not the “same damage” for purposes of the Contribution Act 1978. Arguing Z cannot bring claim against Commissioner, but C would have been entitled to had he sued Mr T directly not the insurer.
- Zurich argued that makes proceedings unnecessarily complicated, and insurer would have to add own insured as D2 to enable them to use subrogated rights and seek contribution. Reg 3(2) “directly liable” puts insurer in shoes of tortfeasor, it is the same damage and phrase “to the extent that he is liable to the insured person” does not change that.

## Decision

- *“It is difficult to see a clearer case of where the damage is the same.”*
- That remedy arises under s88 Police Act 1996 vs 2002 Regulations is “not the point”. Insurer steps into shoes of tortfeasor and defends claim in same way, save may have additional defence re policy cover or upper limit of cover.
- Commissioner’s arguments rejected.
- Policy reason to support this construction, whole purpose of 2002 Regs was to simplify personal injury litigation from RTCs.

## PC D's application to add Commissioner as D2

- CPR r19.2(2) applies before limitation, r19.6 after limitation
- C relied on admission for long time, across limitation period. Risk not recover damages against Zurich and no compensation at all despite Commissioner admitting liability in other proceedings.
- Court focussed on r19.6(4) – noting no use of “necessity”
- Consider desirability rather than necessity. Discretion to add party, to be used wisely.
- Consider all circumstances of application and Overriding Objective (referred to *Pawley v. Whitecross Dental Care Ltd [2021] EWCA Civ. 1827, [2022] 1 W.L.R. 2577*)
- If court decides primary limitation should not apply (r19.6(4)(a)) then highly likely additional party will be added.
- If court cannot consider s33 application at that stage, court consider whether new party should be allowed to litigate limitation. If limitation argument likely to fail, strong reason not to add new party.
- No requirement under r19.6(4) for separate s33 application.
- Here court allowed C's application. Commissioner added as D2 and limitation matter for trial judge if pleaded by D2.

## Part 36

### 1. **Chinda v Cardiff & Vale UHB [2025] EWHC 2692 (clinical negligence case)**

- C's application to withdraw Part 36 which had been accepted by D within relevant period.
- Claim re delayed diagnosis of spinal TB. Breach admitted, and in defence causation also admitted. Judgment entered for C.
- Round table meeting (RTM) took place, thereafter C made Part 36 Offer on 2/7/2025. By 8/7/2025 C's sols put them on notice wished to withdraw. Offer accepted by D 22/7/2025, within period. C then made application to withdraw offer.
- CPR 36.10(3) applies. Reminder this is a self-contained code. C did not lack capacity, and if sols/counsel concerned he found RTM overwhelming should have been given space to consider instructions before making offer.
- Change of mind by C did not amount to change of circs required for r36.10(3).

## Part 36 II

### 2. **Attersley v UK Insurance Ltd [2025] EWHC 884 (KB)**

- RTA March 2018. Claim commenced under low value protocol.
- April 2018 Case exited Portal as liability disputed (later admitted).
- Feb 2017 – Part 7 Proceedings commenced up to £150,000
- March 2021 – Part 36 made by D for £45k.
- January 2022 – case allocated to MT
- July 2022 – offer accepted.
- Issue of which costs regime applies.
- First instance judge found C limited to fixed costs as started in the Portal.
- C appealed
- *Qader [2016]* considered – i.e. fixed costs automatically disapply once case allocated to MT

- Nothing in *Qader [2016]* to suggest it was intended to have an exception for Part 36 offers.
- C could reasonably reject an offer but later accept it due to change of circs. Does not mean “gaming the system”.
- Fixed costs only applied as long as case not allocated to MT (r45.29B)
- Part 36.20 is an exception to r36.13(3). But as effect of r45.39B is to disapply fixed costs for ex-protocol cases then IIIA Part 45 not apply
- Costs payable when offer was accepted on a standard basis.

# Costs

## 1. **JXX v Archibald [2025] WHC 69 (SCCO)**

- C used medical reporting agency to deal with medical evidence. No principle which precludes fees of medical agency being recoverable, as long as reasonable and proportionate costs of the work if had been done by solicitors (Stringer v Copley [2002] 5 WLUK 977).
- Fees to be assessed either (a) if info sought by defendants provided, on the basis of expert's evidence and MRO's work in obtaining that evidence; or (b) if no breakdown of MRO's input, invoices would need to be judged on whether they were reasonable for the work produced by the expert without any additional quasi-legal work by the MRO having been carried out.

## 2. **AKS v National Farmers Union Mutual Insurance Society Ltd [2025] EWHC 126 (SCCO)**

- Firm ordered to repay 25% success fee, deducted from PP's claim, as not contractually entitled to that amount. No evidence discussed with C reasons for the success fee at that level, and had been no real risk assessment until years after that figure was set. 15% allowed as success fee.

## 3. **Zavorotnii v Malinowski [2025] EWHC 260 (KB)**

- RTA with complex injuries.
- Court has the power to order a party to pay costs of a CCMC if budget is overly ambitious and unrealistic.
- C recovered 18.2% more than D offered, and 60% of what he had sought. Therefore, was not deemed unrealistic. Order remained costs in the case.

## Costs II

### 4. CFB v AXA Insurance UK Plc [2025] EWHC 915 (SCCO)

- Court approved settlement of PI claim for a PP, and approved settlement of C's costs against D but declined to approve settlement of C's sols' claim for solicitor and client costs. Court not been provided with sufficient basis for concluding in C's interests to dispense with detailed assessment of sols' costs.
- Guidance in judgment on proper interpretation of Senior Costs Judge Practice Note: Approval of Costs Settlements, Assessments under CPR 46.4(2) and Deductions from Damages Children and Protected Parties.

### 5. Duffield v WM Morrison Supermarkets Ltd [2025] 7 WLUK 5

- Appeal against decision of judge's approach to quantifying success fee and ATE premium in infant approval. ATE and success fee amounted to 50% of the damages, which concerned initial judge who reduced to 10% (*Simmons v Castle* approach), and not reasonable to incur costs-based insurance policy so ATE premium disallowed.
- Judge's approach to success fee was wrong. It is a matter of contract between parties. *Simmons* uplift had nothing to do with contractual recovery of success fee.
- The judge failed to apply the presumptions and assumptions in CPR r46.9. Presumption that solicitor and own client costs had been reasonably incurred if they were incurred with the client's express or implied informed approval.
- Inconsistent to allow success fee but disallow ATE. There was a litigation risk, therefore not unreasonable to have insured against it. Deductions allowed in full.

# Employers' Liability I

## 1. **Berry v Nuttall [2025] EWHC 2253 (KB)**

- C was a LiP, who had previously instructed at least two firms of solicitors. “C clearly felt aggrieved about the course of directions in relation to expert evidence. He alleged that the defendant's solicitors and counsel had conspired against him and used dishonest means to prevent him from putting evidence before the court. He was convinced that the witnesses of fact called by the defendant were fraudulent. I had the impression that he struggled sometimes with the court's procedural rules. I also formed the impression that Mr Berry feels very passionately about this accident and its effects upon him.”
- Interesting read on judge dealing with a challenging LiP.
- Breach had been admitted (C fell from height), issue for court was causation and quantum. £5k awarded.

## 2. **Meggyes v Bentley Motors Ltd [2025] 3 WLUK 411**

- Employee claimed for stress and depression due to his workload.
- Failed to establish risk of psychiatric harm was foreseeable, and thus that D had breached his duty. Claim dismissed.

## Employers' Liability II

### 3. Lee v Kraud [2025] EWHC 716 (KB)

- Appeal of HHJ Duddridge that C was 1/3 con neg. C at D's property and fell from unfenced mezzanine floor. Serious injuries.
- All D's accepted a guard rail should have been in place, but contended con neg on grounds that it was obvious there were not rails/crash mats, risk of falling foreseeable, and C offered to work on mezzanine without familiarising himself with the area, C did not take sufficient care to keep away from the obvious edge, and C also had duty to consider his health and safety.
- Appeal dismissed, con neg remained 1/3.

### 4. Chuhan v Dechert LLP [2025] 4 WLUK 388

- Claim for head injury sustained at work when a handle on a fire door detached as C pulled it. Claim under EL (Defective Equipment) Act 1969.
- Claim denied on basis the door was not equipment for purposes of s1(1) and 1(3). D argued doors fell within Workplace (H,S,&W) Regs 1992, and not within PUWER 1998.
- Claim dismissed for that reason. None of words in s1 were apposite to incorporate doors; doors cannot be considered equipment.

# Employers' Liability II

## 5. JD Wetherspoon Plc v Burger [2025] EWHC 1259 (KB) – Jonathan Payne for appellant

- Recorder found pub chain vicariously liable for actions of door security staff employed through independent contractor (R), who was restrained with such force he suffered a dislocated hip. Default judgment had already been entered against (R).
- Appeal on basis failure to apply the vicarious liability test properly. In particular “close connection” test.
- Reminder that the test requires a careful factual analysis of the link between the wrongful conduct and the tortfeasor's authorised activities. Open to Recorder to find actions linked to function as doormen, assault arose from interaction on entry/departure from premises.
- Akin to employment – case distinguished from *Hawley (2006)*. Contract between the appellant and R, which was for security from an independent third party. The fact that security was integral to the pub's functioning did not transform the relationship into one akin to employment; it only explained why the service was necessary. Contract stated R retained control over employees, including hiring/training/supervision. Appellant had no authority over operations. Recorder erred in finding appellant vicariously liable.

# Highways I

## 1. **Remiszewski v Gloucestershire CC [2025] 1 WLUK 229**

- Pedestrian claim against highway authority for tripping over a kerbstone
- The judgment has a picture of the defect in it!
- Court accepted she tripped on a lowered and rotated kerbstone, which was next to a designated crossing point.
- However, not a “real source of danger to pedestrians” as kerbstones not in an area expected to be used by pedestrians (noting the crossing right next to this). Claim failed.

## 2. **Brathwaite v Lewisham LBC [2025] EWHC 782 (KB)**

- C driving on motorcycle (10pm), C turned right and rode into extended area of footway/kerb 75mm high (“build out”). There had been 4 wooden bollards (without reflective strips) to identify this built out area. C’s case that one of wooden bollards gradually rotted and stumps removed by D, and he did not see the “build out” until he was about to collide with it. C travelling at excessive and illegal speed.
- Post-accident D changed layout, and even later changed entirely to a cycle lane. Though some of this evidence was not permitted for appeal.
- Case dismissed at first instance by HHJ Saggerson. Appeal dismissed on all grounds.

## Highways Claims II

### 3. **Morriss v Hillingdon LBC [2025] EWHC 983 (KB)**

- Motorcyclist failed to satisfy court on BoP that his RTA had been caused by the front wheel of his motorcycle losing traction on a manhole cover. Evidence demonstrated the accident probably caused by momentary rider error rather than dangerous condition/siting of manhole.
- Remind to ensure witnesses will withstand XX and be careful they have not “tracked back” to theorise what might have caused the accident.

### 4. **Suffolk CC v Lyall [2025] EWHC 1032 (KB)**

- LA installed a wooden boardwalk over an existing right of way. In a damp and shady area, therefore foreseeable likely growth of slippery moss and algae.
- Claim failed under s41 (duty to ensure highway clear of moss/algae etc) and failed in common law on failure to inspect.
- Judgment for C that LA should have conducted risk assessment and considered anti-slip measures.
- LA appealed decision unsuccessfully.

# Highways III

## 5. Karpasitis v Hertfordshire CC [2025] EWCA Civ 788

- Appeal against dismissal of claim on basis of s58 HA 1980 defence.
- In the circumstances, a cyclist using the grass verge to pass another highway user was foreseeable and was ordinary usage for s41 duty.
- Trial judge effectively ignored GPS vehicle tracking info which showed inspector in area for 3 minutes, 2 months before the accident. Criticised on Appeal for overlooking contemporaneous docs, especially from an independent source which should be the starting point. The inevitable inference was inspector had not conducted walked inspection on relevant path and grass verge as asserted.
- Appeal allowed.

# Fundamental Dishonesty

## 1. **Morris v Williams [2025] EWHC 218 (KB)**

- D sought to adduce a letter written by C's solicitors marked "without prejudice" in a RTA claim.
- D alleged FD that C had seriously exaggerated effect and extent of injuries.
- D argued letter fell within the unambiguous impropriety exception to inadmissibility, as it showed C accepted he had been fundamentally dishonest regarding some parts of his case.
- Application allowed

## 2. **O'Connell v Ministry of Defence [2025] EWHC 2301 (KB)**

- C's action concerning injuries in a riding accident. C failed to establish negligence and failed under Animals Act.
- C found to have been FD and knew being dishonest about extent of disability, responsibility for horse, her vehicle and her employment. This went to the heart of the claim, presenting picture more disabled than she actually was. Attempts to conceal the truth had been sophisticated. D granted permission to enforce any costs order obtained to full extent (CPR r.44.16).

# Fundamental Dishonesty II

## 3. **Boyd v Hughes [2025] EWHC 435 (KB)**

- C's claim under Animals Act when injured after falling from cantering horse which D instructed her to ride. Case failed under AA.
- Issue of FD raised.
- Court satisfied C did give answers to experts which she knew were not true and did not give an accurate picture
- Question was whether “fundamental to primary claim”.

# Decision

- C anxious that her level of disability not be underestimated, so exaggerated elements. Was a serious injury and recovery plateaued in 2020.
- First statement C explained impact on mental health and money worries. Court considered that was point of motivation to exaggerate/dishonesty.
- C did disclose return to football and retraining with HGV licence BEFORE she was aware of surveillance
- Court rejected “polarised overviews” provided by counsel.
- Surveillance not devastating.
- Exaggeration only PSLA. Did not exaggerate disability or affects on life. No future care claim/equipment, schedule never materially changed
- Experts not find inappropriate signs on examination. C did have ongoing issues and daily painkillers required.
- “dishonest embellishment” not going to root or heart of the claim – by a “narrow margin”.

# Secondary Victims

## 1. *Young v Downey* [2025] EWCA Civ 177

- C aged 4.5 at time of Hyde Park Bombings. Saw her father (Corporal) leave barracks, heard explosion, saw others return covered in nails and blood. Told her mother “daddy should be coming now” but he never did as he died of his injuries.
- Secondary victim claim dismissed at first instance on basis that:
  1. C could not demonstrate that she “appreciated” that her father had been/might have been in the explosion
  2. Court rejected psychiatric evidence that she had feared her father (primary carer) was in explosion and sought, but did not obtain, reassurance about his return.
- D chose not to participate in proceedings. Had been convicted of joint enterprise for the attack. C also argued Judge should not have taken on role to challenge expert evidence himself and reject it (*Griffiths v TUI*)



- First instance findings:
  - The mind of a 4.5 year old *“works very differently to an adult’s and I do not think that a four-year-old would have appreciated that her father was in danger without witnessing herself a trauma being inflicted on him”*
  - *not prepared to assume that she made the connection in the absence of some evidence to that effect from what she said at the time*". The judge interpreted what she did say later, contrary to Dr Cooling's evidence, *"as indicating that she had not made the association"*
- Court referred to *Paul [2024]* and *Alcock* (*C's presence at the scene of an accident or its immediate aftermath was essential to liability – proximity*)



- Had Judge's findings been correct, then injury not have arisen from witnessing harm/danger to her father. Not injured due to immediate aftermath.
- However, judge was "wrong to introduce new and separate requirement of appreciation beyond what has been explained in the Alcock , McLoughlin , Frost and Paul"
- Issue was a factual rather than legal one in this case.
- Court did not agree with submissions about *Griffiths*. Was open to court to ask Qs of any witness called if it has doubts about understanding of the evidence or material matter arising from it
- Here Judge ". Impermissibly allowed his own inexpert opinions about the mental capabilities of a 4.5 year old to influence his evaluation of the expert evidence". Not clear Judge put his opinions to the expert for comment. Should not have allowed personal experience to override reasoned expert evidence.
- Decision on facts clearly wrong and should be reversed.
- C did make association between what she had seen and her father, was unusual/frightening, fear her father had been involved. Had established proximity from witnessing those events.
- Appeal allowed.

# Road Traffic Collisions

## 1. **Dormer v Wilson [2025] EWHC 523 (KB) [Simon Brindle for C]**

- 15 y/o seriously injured as pillion passenger on a stolen motorbike, driven by his 16 y/o uncle (D1). Neither wore helmets. D1 drove dangerously resulting in collision.
- Motorbike had been stolen by gang 3 days before the accident. Issue whether C knew or suspected bike stolen/unlawfully taken.
- C did not have 'blind eye knowledge' of that fact (suspicion they deliberately avoided confirming). On BoP no such suspicion, he was streetwise but naïve about the uncle.
- Illegality defence – joint enterprise raised. D1's driving was dangerous but not established C encouraged this or intended to do so.
- Issues with insurance cover (of true owner) and MIB recovery, insurer attempted to exclude pillion passengers from policy (worth reading this part). Insurer was deemed liable to C to satisfy any judgment against D1 as RTA insurer, if wrong then MIB to pay instead. Con neg deduction of 20%.

## 2. **MW v Wilkinson [2025] EWHC 2300 (KB)**

- M and E (twins aged 5) had been collected by their 15 y/o brother after school. Brother and E talked to a teacher, in that time M became separated and crossed the road on his own.
- Speed limit 30mph, advisory 20mph due to school. Brother shouted at M to stay put. Instead M tried to re-cross street, hit by car. Lifechanging injuries for M, and psychiatric injuries to E.
- Claim dismissed. D driving not more than 20mph. Parked car on the road, M emerged from this (running or walking). No opportunity for D to take evasive action. Genuine and tragic accident.

## RTC II

### 3. **Pashamov v Taylor [2025] EWHC 1035 (KB)**

- C pedestrian crossing road after travelling home on a bus provided by employer. Got off bus and route required him to cross a 60mph road with no safe designated crossing place.
- Driver not liable, driving did not fall below reasonable standard.
- Employer liable for activities incidental to employment and expecting him to cross such a road. 65% liable, deduction of 35% con neg for C's failure to act as carefully as he should.

### 4. **QXK (Protected Party) & Cox v Bair & UK Insurance Ltd [2025] EWHC 2492 (KB)**

- Collision on 20/6/2021 where a dark VW Passat hit both Claimants (pedestrians), causing serious injuries including catastrophic brain injury for QXK. Passat did not stop, no CCTV to identify it.
- 23/6/2021 a dark VW Passat was found burnt out on an estate 4.5 miles from the accident location. Burned Passat insured with D2, with Blair as named driver.
- Cs assert these are same vehicles. D1 bought it on 6/6/2021, insured it with false policy holder and named himself as a driver. Arranged it to be reported stolen on 21/6 post collision and burnt it out.
- Issues at trial on practicalities, as Blair in HMP Wandsworth (unrelated matters), and various tech and production issues.
- Court satisfied Cs' case was correct. Therefore D1 had relied on a dishonest defence throughout case. On that basis indemnity costs ordered against D1, payable by D2 as s151 insurer.

# Occupiers Liability and common law

## 1. **Upchurch v Network Rail Infrastructure Ltd [2025] 3 WLUK 851**

- Claim by estate of passenger who fell whilst disembarking from a train and died from injuries.
- C not discharged burden that gap between train step and platform edge represented a hazard requiring D to give specific warnings/additional precautions.
- Most measurements complied with industry guidance for new platforms. Not an unusual danger. Claim dismissed

## 2. **R&B Plastering Ltd v UK Insurance Ltd [2025] EWHC 719 (KB)**

- Accident on a construction site. Duty of care under OL and common law.
- Payments made by D to fund C's rehabilitation were recoverable under Civil Liabilities (Contribution) Act 1978. Provided D made any payment in "bona fide settlement or compromise of any claim" and the contributor was liable in respect of the same damage as D. Contribution could cover sums not traditionally regarded as damages, such as funding rehabilitation.



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# Clinical Negligence Update

Ella Davis

# **PMC v A Local Health Board [2025] EWCA Civ 1126**

- C injured at birth in 2012 leading to cerebral palsy and profound disability.
- Liability admitted in 2016 and judgment entered in November 2023.
- Claim valued at more than £10 million and substantial interim payments already made.
- C applied for anonymity order on standard PF10.
- Evidence in support included 2 previous media articles following family's earlier engagement with media.
- Application refused by Nicklin J in November 2024.

# PMC v A Local Health Board [2025] EWCA Civ 1126

- C was seeking a withholding order (“WO”) and a reporting restrictions order (“RRO”).
- A WO is an order to withhold or anonymise the name of a witness or party, including withholding information that would identify the person.
- An RRO is an order which restricts the reporting of material disclosed in proceedings, whether in open court or by public availability of court documents.
- An order doing both is an anonymity order (“AO”).

# PMC v A Local Health Board [2025] EWCA Civ 1126

- CoA held there is a common law power to derogate from the principle of open justice in civil or family court proceedings by making a WO and RRO if strictly necessary in the interests of justice.
- The power can be deployed to protect the interests of vulnerable parties.
- *JXMX v Dartford* [2015] 1 WLR 3647 remains good law, but the application for approval can and should be listed anonymously.

# PMC v A Local Health Board [2025] EWCA Civ 1126

- The court should normally make an AO without the need for a formal application.
- If the Press wishes to oppose an application it should file and serve on C a statement setting out the objections.
- The Press need not be put on notice, except where, as in PMC, articles have already been published. The publishers should then be contacted.
- It is not a pre-condition that the name should have been withheld throughout proceedings, and nor is the fact of previous publicity an automatic bar, though that is an important factor.
- In PMC the possibility of jigsaw identification was not sufficient to preclude an order being made.
- Updated PF10 now available online

# Hill v East Kent Hospitals University NHS Foundation Trust [2025] EWHC 1241 (KB)

- Interim payment application to allow C to move from nursing home to own home (already purchased and adapted). That need supported by D, but amount of likely damages challenged.
- PSLA – accepted court might follow *Reaney v University Hospital of North Staffordshire NHS Trust [2016] PIQR Q3* and reduce damages to reflect disability attributable to underlying MS.

# Hill v East Kent Hospitals University NHS Foundation Trust [2025] EWHC 1241 (KB)

Accommodation –

- C had a life expectancy of 12.24 years.
- A rigid application of Swift v Carpenter would have entitled C to 45% of purchase price of house.
- C argued that had she bought a property for a lower purchase price as originally recommended by her expert, she would have recovered substantial modification costs in full.

# Hill v East Kent Hospitals University NHS Foundation Trust [2025] EWHC 1241 (KB)

## Accommodation

- Held that the correct approach to the determination of accommodation costs in a short life expectancy case had not been the subject of the necessary developed or detailed legal argument for the purposes of the application.
- There was no clear justification for the inclusion of the notional value of alterations which were recommended on the basis of the purchase of a different smaller property.

# GRM v Liverpool University Hospitals NHS Foundation Trust [2025] EWHC 790 (KB)

- C applied for appointment of Official Solicitor as litigation friend.
- Judge approved the appointment but made directions for a 3 day hearing of an issue as to C's capacity to conduct litigation and manage funds.
- C appealed the part of the order directing the hearing of capacity as a preliminary issue.
- C relied on *Folks v Faizey* [2006] EWCA Civ 381 in which the CA had previously deprecated the development of satellite litigation in relation to capacity.

# **GRM v Liverpool University Hospitals NHS Foundation Trust [2025] EWHC 790 (KB)**

- D had no real interest in whether a LF appointed and appointment would cause them no real prejudice. If anything, it provided a degree of protection.
- Approval of a settlement is not a significant burden on parties – especially D.
- While questions of capacity in respect of managing affairs might affect quantum, that is a matter to be decided on evidence at trial, not as a preliminary issue.
- D should not have been permitted to “intermeddle”.

# **Hodgson v (1) Dr Hammond (2) Dr Dieleman [2025] EWHC 1610 (KB)**

- Ds were liable for failure to diagnose PID.
- C suffered chronic PID with severe adhesions, and her rectum was adherent to her uterus.
- With timely treatment she would have avoided (inter alia)
  - Loss of her left fallopian tube;
  - Severe and extensive adhesions (though she would have had some);
  - All of her dyschezia;
  - Much of her dyspareunia; and
  - Some of her increased risk of infertility.

## **Hodgson v (1) Dr Hammond (2) Dr Dieleman [2025] EWHC 1610 (KB)**

- The judge was highly critical of C's failure to plead a figure for PSLA, and of the fact that Ds only learned what she was seeking when skeletons were filed shortly before the trial.

*“This approach leaves the Defendants unclear of what their potential liability is, prevents them from answering the head of claim in their counter-schedules, and stifles any meaningful opportunity for settlement.”*

## **Hodgson v (1) Dr Hammond (2) Dr Dieleman [2025] EWHC 1610 (KB)**

- Ds disputed that Chapter 6F was appropriate as it referred to infertility in absolute terms and C was only subfertile. They relied on Chapter 9 relating to pain disorders.
- J held treating this as a pain disorder case would undercompensate and did not agree that Chapter 6F was inappropriate as a starting point. However, she had regard to all brackets to which she was referred and declined to place the case in one of them in awarding £94,000.00.

## **Hodgson v (1) Dr Hammond (2) Dr Dieleman [2025] EWHC 1610 (KB)**

- C claimed for yoga, acupuncture and abdominal massage.
- D2 offered a sum for the abdominal massage on the basis it was reasonable to trial this alternative therapy.
- D1 disputed all of the therapies on the basis of lack of clinical benefit and lack of recommendation by treating clinicians or experts.
- J awarded nothing.

# **Hodgson v (1) Dr Hammond (2) Dr Dieleman [2025] EWHC 1610 (KB)**

- The claim for adhesiolysis was rejected. There was evidence that the benefit was uncertain and the evidence that it was safe even in patients less complex than C was uncertain.
- C's expert did perform the surgery because he believed it could be beneficial, but would not offer it to C.
- It was also very unlikely she would have such treatment privately. She would be best served in a tertiary endometriosis centre with a specialist multidisciplinary team.

# Hodgson v (1) Dr Hammond (2) Dr Dieleman [2025] EWHC 1610 (KB)

- Since the index events C had given birth to 1 son and separated from her partner. Her evidence that she wanted further children in a future loving relationship was accepted, and it was accepted as probable that she would find such a relationship.
- However, her evidence was that she wanted 3 further children and she claimed 3 rounds of IVF. J held time was against her in this respect.
- Ds disputed that any award should be made as there was too much uncertainty. J disagreed and allowed 1 round.
- She rejected D1's invitation to discount this further to reflect that C may not find a partner or may conceive naturally, but held that discounting from 3 rounds to 1 was sufficient.

## **Shaheen v Daish [2025] EWHC 3056 (KB)**

- Deceased saw his GP who requested a chest X-ray.
- The request would only be acted on if the patient attended a walk-in radiology department.
- There was a dispute as to whether the GP told the Deceased she had made the request and what he had to do.
- The Deceased did not attend. If he had he would have been treated for the lung cancer from which he died at age 49. Causation thereafter was disputed.

# Shaheen v Daish [2025] EWHC 3056 (KB)

- A trial of 3 preliminary issues was ordered:
  - Was the Deceased told of the need to attend for a chest X-ray?
  - If not, would he have attended had he been so informed?
  - Contributory negligence.
- The evidence included a statement of the Deceased dated nearly 3 years after the appointment. The GP was able to rely only on her record and usual practice.

## **Shaheen v Daish [2025] EWHC 3056 (KB)**

- There was evidence the Deceased did not always attend appointments. His written evidence was also demonstrably inaccurate in relation to the later course of his symptoms, and of course untested.
- The only live witness who could give evidence of the consultation was the defendant GP.
- Nevertheless, the judge found it proved that the Deceased was not told about the X-ray request, and would have attended if he had been.
- The records indicated the request was likely an afterthought.

## Shaheen v Daish [2025] EWHC 3056 (KB)

- D alleged that the Deceased was negligent in failing to attend a follow up appointment and a later asthma review.
- The judge distinguished *Pidgeon v Doncaster Royal Infirmary and Montagu Hospital NHS Trust* [2002] Lloyd's Rep Med 130 and *Sims v MacLennan* [2015] EWHC 2739 (QB), on the grounds that the patients in those cases understood the risks of not following advice.
- Here the Deceased had not understood there was a concern he had cancer.

# Shaheen v Daish [2025] EWHC 3056 (KB)

## A New Year's Resolution

“The respect and courtesy shown by the parties towards each other has been a feature of this trial, both in the documents and in the oral evidence.”

# Additional Reading (Procedure)

- *Speirs v St Georges University Hospitals NHS FT [2025] EWHC 337 (KB)* – interim payment application
- *Butler v Ward [2005] EWHC 877 (KB)* – summary judgment, strike out of schedule of loss, wasted costs
- *Prudence & Anor v Gloucestershire Hospitals NHS Foundation Trust [2025] EWHC 1209 (KB)* – pleading of scope and nature of duty, summary judgment/strike out
- *Read v North Middlesex Hospital Trust [2025] EWHC 1603 (KB)* – strike out, pleadings not supported by expert evidence, QOCS

# Additional Reading (Duty and Breach)

- *Bartolomucci v Circle Health Group Limited [2025] EWHC 529 (KB)* – Contractual liability of private hospital for acts of consultants
- *Deakin-Stephenson v (1) Behar, (2) Chelsea and Westminster Hospital NHS Foundation Trust [2024] EWHC 2338 (KB)* – consent, request for second opinion
- *Bailey v (1) Bijlani, (2) MBNA Ltd [2025] EWHC 175 (KB)* – s.75 Consumer Credit Act 1974, dental negligence, MacKenzie Friends

## Additional Reading (Witness evidence)

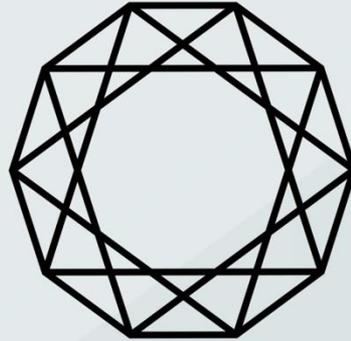
- *Hodgson v (1) Dr Daniel Hammond, (2) Dr Andre Dieleman [2025] EWHC 1261 (KB)* – GP negligence in failing to diagnose PID, criticisms of expert and lay witnesses
- *Hepworth v Coates [2025] EWHC 1907 (KB)* – *Gestmin* principles and witness v documentary evidence, criticism of expert witness

## Additional Reading (Consent)

- *Tosh v Gupta [2025] EWHC 2025 (KB)* – evidence of usual practice
- *HQA (by her Litigation Friend HQK) v Newcastle-upon-Tyne Hospitals NHS Foundation Trust [2025] EWHC 2121 (KB)* – C unable to give evidence

# Watch this Space

- *CCC v Sheffield (2025) UKSC* – judgment awaited following February 2025 hearing re lost years claim of young and severely injured child



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